



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0367; FRL-9952-17-Region 9]

Approval of California Air Plan Revisions, Butte County Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Butte County Air Quality Management District (BCAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of particulate matter (PM) from open burning. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on [Insert date 60 days after the date of publication in the Federal Register] without further notice, unless the EPA receives adverse comments by [Insert date 30 days after the date of publication in the Federal Register]. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2016-0367 at <http://www.regulations.gov>, or via email to Andrew Steckel, Rulemaking Office Chief at Steckel.Andrew@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment

received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, (415) 972 3073, *Gong.Kevin@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

Table of Contents

- I. The State’s Submittal
 - A. What rule did the State submit?
 - B. Are there other versions of this rule?
 - C. What is the purpose of the submitted rule revision?
- II. The EPA’s Evaluation and Action
 - A. How is the EPA evaluating the rule?
 - B. Does the rule meet the evaluation criteria?

C. EPA recommendations to further improve the rule

D. Public comment and final action

III. Incorporation by Reference

IV. Statutory and Executive Order Reviews

I. The State's Submittal

A. *What rule did the State submit?*

This action addresses BCAQMD Rule 300, "Open Burning Requirements, Prohibitions and Exemptions" as amended by the district on August 27, 2015 and submitted to the EPA on March 11, 2016 by the California Air Resources Board.

On April 19, 2016, the EPA determined that the submittal for BCAQMD Rule 300 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. *Are there other versions of this rule?*

The EPA promulgated a limited approval of an earlier version of Rule 300 into the SIP on July 8, 2015 (80 FR 38966). The EPA also simultaneously promulgated a limited disapproval because two provisions in the rule provided discretion to the District Air Pollution Control Officer (APCO) to independently interpret the SIP without explicit and replicable procedures within the rule.

C. *What is the purpose of the submitted rule revision?*

PM, including PM equal to or less than 2.5 microns in diameter (PM_{2.5}) and PM equal to or less than 10 microns in diameter (PM₁₀), contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and

cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control PM emissions.

BCAQMD Rule 300 controls PM emissions by establishing requirements on when and how to conduct various types of open burning activities, including but not limited to agricultural burning, non-agricultural burning (such as land use conversion), and residential burning. The EPA finalized a limited approval of a previous version of this rule because it is largely consistent with applicable CAA requirements. However, the EPA simultaneously promulgated a limited disapproval of the rule for two instances of APCO discretion that did not meet CAA requirements for enforceability. BCAQMD's 2015 rule revision corrects the two deficiencies identified in our previous action. The EPA's technical support document (TSD) has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must implement Reasonably Available Control Measures (RACM) in moderate PM nonattainment areas (see CAA sections 172(c)(1) and 189(a)(1)(C)). BCAQMD regulates the Chico nonattainment area, which was classified as "nonattainment" for the 2006

24-hour PM_{2.5} NAAQS on November 13, 2009 (74 FR 58688). On September 10, 2013 (78 FR 55225), EPA issued a determination that the area had attained the 2006 24-hour PM_{2.5} standard based on complete, quality-assured, and certified ambient air monitoring data for the 2010–2012 monitoring period. Under EPA's Clean Data Policy and the regulations that embody it (40 CFR 51.1004(c) for PM_{2.5}), an EPA determination that an area is attaining the relevant standard suspends the area's obligations to submit RACM for as long as the area continues to attain. Therefore, BCAQMD is not currently required to implement RACM for PM_{2.5}. If the Chico nonattainment area is redesignated to attainment, RACM requirements for PM_{2.5} will no longer apply.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations” (“the Bluebook,” U.S. EPA, May 25, 1988; revised January 11, 1990).
2. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies” (“the Little Bluebook,” EPA Region 9, August 21, 2001).

B. *Does the rule meet the evaluation criteria?*

We believe this rule is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

C. *EPA recommendations to further improve the rule*

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule but are not currently the basis for rule disapproval.

D. Public comment and final action

As authorized in section 110(k)(3) of the Act, the EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements.¹ This approval remedies both deficiencies identified by our limited approval and limited disapproval action at 80 FR 38966, and therefore terminates the CAA sanction and Federal Implementation Plan clocks triggered by that action. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by [**Insert date 30 days after date of publication in the Federal Register**], we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on [**Insert date 60 days after date of publication in the Federal Register**]. This will incorporate the rule into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the BCAQMD rule described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in

¹ Upon the effective date of this final action, BCAQMD Rule 300 would supersede existing BCAQMD Rule 300, approved at 80 FR 38966, in the applicable SIP.

the “FOR FURTHER INFORMATION CONTACT” section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 21, 2016

Alexis Strauss,
Acting Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Subpart F – California

2. Section 52.220 is amended by adding paragraphs (c)(423)(i)(G)(2) and (c)(474)(i)(C)(1) to read as follows:

§52.220 Identification of plan.

*	*	*	*	*
(c)	*	*	*	
(423)	*	*	*	
(i)	*	*	*	
(G)	*	*	*	

(2) Previously approved on July 8, 2015 in paragraph (c)(423)(i)(G)(1) of this section and now deleted with replacement in paragraph (c)(474)(i)(C)(1), Rule 300, “Open Burning Requirements, Prohibitions and Exemptions,” approved on February 24, 2011.

*	*	*	*	*
(474)	*	*	*	
(i)	*	*	*	

(C) Butte County Air Quality Management District

(1) Rule 300, “Open Burning Requirements, Prohibitions and Exemptions” amended on August 27, 2015.

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